

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

February 1, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-2341**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**IN THE INTEREST OF KOUA V.,  
A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**KOUA V.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for La Crosse County:  
JOHN J. PERLICH, Judge. *Affirmed.*

EICH, C.J.<sup>1</sup> Koua V., a minor, challenges an order waiving juvenile jurisdiction with respect to three criminal charges filed against him--all of them "gang-enhanced": possession of a dangerous weapon; providing a dangerous weapon to a child; and possession of a stolen firearm. We reject his argument that the trial court erroneously exercised its discretion in ordering waiver and affirm the order.

---

<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

Waiver of juvenile jurisdiction is committed to the sound discretion of the trial court. *Interest of J.A.L.*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). And while the best interest of the child is the "paramount consideration" in all juvenile court proceedings,

[t]he ... court has discretion as to the weight it affords each of the [statutory] criteria ... in deciding whether to waive jurisdiction. A juvenile judge is to state his or her finding with respect to the criteria on the record, and, if the judge determines on the record that it is established by clear and convincing evidence that it would be contrary to the best interests of the child or of the public for the juvenile court to hear the case, the judge must enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate ... proceedings in the criminal court.

*Id.* (Citation omitted.)

Our review of a discretionary determination is limited.

We review a court's exercise of discretion to determine if there is an abuse. An appellate court first looks to the record to see whether that discretion was in fact exercised. Assuming discretion was exercised, the appellate court will look for reasons to sustain the trial court's discretionary decision. An appellate court will reverse a juvenile court's waiver determination if and only if the record does not reflect a reasonable basis for the determination or a statement of the relevant facts or reasons motivating the determination is not carefully delineated ....

*Id.* at 960-61, 471 N.W.2d at 501 (citations omitted).

Before a minor may be waived into adult criminal court, the juvenile judge must determine whether the charges have "prosecutive merit." That determination is not challenged on this appeal.

If prosecutive merit is found, the judge is to make the determination whether to waive jurisdiction based on consideration of several criteria, including the child's "personality and prior record," the nature of the offense, and the adequacy and suitability of facilities and services available in the juvenile system. Sections 48.18(5)(a), (b) and (c), STATS. Koua V. argues that the trial court erroneously exercised its discretion in its consideration of the first two criteria.

Section 48.18(5)(a), STATS., insofar as it is pertinent to Koua V.'s arguments on this appeal, states that the court shall consider:

The personality and prior record of the child, including whether the child is mentally ill or developmentally disabled,... the child's motives and attitudes, the child's physical and mental maturity, the child's pattern of living, prior offenses, prior treatment history and apparent potential for responding to future treatment.

Section 48.18(5)(b), STATS., requires the court to consider the "type and seriousness of the offense" charged, and subsection (c) requires consideration of the "adequacy and suitability of facilities, services and procedures available for treatment of the child and protection of the public within the juvenile justice system."

In its decision, the trial court referred to Koua V.'s prior adjudications of delinquency, including one involving a knife, his continuing involvement with gangs, his physical and mental immaturity, and the inability of the juvenile court system and his parents to control his behavior. The court discussed Koua V.'s prior treatment and services history in the juvenile system, noting that "[h]e has frustrated those efforts that have been made on his behalf.... [E]verything that was tried he frustrated." The court went on to conclude that the facilities and services in the juvenile court system "are just not

adequate for the kind of problems that we have to deal with" as far as Koua V. was concerned. The court then stated:

In my mind the area that is of most concern is the type of the offense, the seriousness of the offense, and the pattern of the offense. We have gone from a situation where a young man is pulling a knife and threatening other kids with that knife, to the point where now he is carrying a loaded, concealed, stolen pistol, concealed under his clothing. I think that that obviously indicates that the severity of the situation, the severity of the crimes has increased substantially.

The activities that he has engaged in obviously have some serious risk to the community as well as the participants ....

I am satisfied that even though he professes some remorse, that without some severe, extensive services, those not available in the juvenile system, we're not going to see any changes in his behavior.

....

I am satisfied that it is not in his best interests, nor is it in the best interests of the public that this case remain in juvenile court. There are some activities that are so dangerous, so serious to the community, that when you look back at his history and compare it to these acts, the history of pulling the knife, the history of threatening to use it, and now the guns, concealed weapons, waiver is demanded.

Koua V. argues that the court should not have placed any emphasis on the prior delinquency adjudication involving use of a knife, because it was simply a matter of the "poor judgment ... one might expect from a [then] 13-year-old Hmong boy." He also asserts that he was adjudged delinquent on only two prior occasions, and that the court placed undue reliance on his prior delinquencies in making the waiver decision.

There was evidence, however, that Koua V. had also been adjudged delinquent on charges of sexual assault and reckless use of a weapon, and that he had at least ten separate referrals to the juvenile system in past years.

Koua V. also points to testimony describing him as, in his words, "cooperative, open, and quite pleasant" and as "trying to get out" of gangs, and he asserts that the court "abused it's [sic] discretion in electing [sic] testimony that was contradicted by all the other witnesses to suit the court's purpose." We see absolutely no substantiation in the record to support Koua V.'s accusation that the trial court ignored the evidence in order to fashion a result to suit some private or personal preference.

The weight to be accorded the various statutory criteria is within the court's discretion, *Interest of B.B.*, 166 Wis.2d 202, 209, 479 N.W.2d 205, 207 (Ct. App. 1991), and we are satisfied that the court's decision is easily justified by the evidence of Koua V.'s past contacts with the juvenile system and his prior delinquency adjudications. In addition, the incidents underlying the present charges--as recited in the delinquency petitions--concerned his presence at, and tacit involvement in, two and possibly three gang shootings, even though Koua V. may not, as he claims, have been "violent or aggressive" himself in those incidents.

We think the same is true with respect to his complaint that the court erred in finding the juvenile system to be inadequate to deal with his problems. While there was testimony that he was doing well in juvenile detention and might also do well in an out-of-home placement within the system, the same witnesses also stated that he does not "take[] the juvenile system ... very seriously," but rather "tries to work around it, and he tries to manipulate and seems pretty sophisticated [in] doing that." And, as the court noted, there was also evidence of his many prior contacts with the system, and that all the efforts expended by the system on his behalf were continually frustrated by his own conduct.

Where the record shows that the trial court looked to and considered the facts of the case and reasoned its way to a conclusion that is one a reasonable judge could reach and consistent with applicable law, we will affirm the decision even if it is not one with which we ourselves would agree.

*Burkes v. Hales*, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991). We believe the trial court met those requirements here, and Koua V.'s arguments have not persuaded us to the contrary.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.